

# INFORMALIZATION, OBFUSCATION AND BILATERAL LABOR AGREEMENTS

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*Researchers who have attempted to collect and compare bilateral labor agreements (BLAs) have encountered varying degrees of accessibility of information on these agreements. Why is it harder to find out information on some bilateral labor agreements than others? In this Article, we argue that it is more difficult to find information and agreements tend to be more informal when governments want to obscure what they are doing. Building on insights from the study of optimal obfuscation in trade policy and research on informal institutions in international politics, we argue that policymakers use more informal agreements and make it more difficult to find information on BLAs when they think they will be politically unpopular and are unlikely to be ratified. In contrast, leaders will be more likely to use formal agreements when they want to lock in a policy. Drawing on original quantitative data on the accessibility of information on bilateral labor agreements and Peters' 2019 database on BLAs, the Article analyzes the accessibility of information on bilateral labor agreements and finds some support for our argument.*

## INTRODUCTION

Why is it so hard to find information about bilateral labor agreements (BLAs)? If scholars, journalists, or politicians are interested in preferential trade agreements, they can search the World Trade Organization's database.<sup>1</sup> Similarly, if they are interested in international investment treaties, they can search UNCTAD's database.<sup>2</sup> But the International Organization for Migration (IOM) and the U.N. Treaty Series (UNTS) do not contain information on many of the bilateral labor agreements signed by states. Perhaps these agreements do not enter the UNTS because states do not think they count as treaties and therefore do not file them as such,<sup>3</sup> or perhaps the IOM

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1 PREFERENTIAL TRADE ARRANGEMENTS, WORLD TRADE ORG., <http://ptadb.wto.org/?lang=1> (last visited Oct. 1, 2021).

2 INTERNATIONAL INVESTMENT AGREEMENTS NAVIGATOR, INVESTMENT POLICY HUB, <https://investmentpolicy.unctad.org/international-investment-agreements> (last visited Oct. 1, 2021).

3 The lack of registration of an agreement suggests that governments have decided that it is not legally binding. See Anthony Aust, *The Theory and Practice of Informal International Instruments*, 35 INT'L COMP. L.Q. 787, 803 (1986). According to the Vienna Convention on the Law of Treaties, however, all types of agreement have the force of agreements that states call "treaties" and therefore should be placed in the series. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

cannot log these agreements due to its relatively limited capacity. Yet, as we describe below, finding information about them in the press or online is difficult too. We argue that the lack of information about BLAs is not because of a lack of technical reporting capacity by the IOM or because of the lack of salience of labor migration as an issue. Instead, we argue that governments, especially those in receiving states, often have an incentive to limit information about these BLAs because they fear that the agreements will be unpopular.

BLAs represent a circumvention of the state's immigration laws. They are signed by receiving state governments to provide workers to a given industry(ies) or to a given employer(s) that would not usually have the right to recruit these immigrant workers.<sup>4</sup> As such, they confer the right to enter the state for work on a group that is generally unable to. Immigration is already a controversial and salient issue in many countries, so an agreement that leads to greater openness can potentially be politically problematic. Incumbents who wish to stay in office then have an incentive to hide, or obfuscate, information about these agreements.

Obfuscation as a strategy comes into play when governments face potential political backlash for a policy. Building on Kono's argument that democratic leaders have an incentive to hide unpopular policies from the public,<sup>5</sup> we argue that policymakers have an incentive to obfuscate, especially as the issue of immigration becomes more controversial. BLAs, by design, are a carve-out for a particular interest group. Policymakers who want to support this interest group must balance that with their concern about public opinion. We, therefore, expect it to be more challenging to find information on agreements signed during periods when immigration was especially salient or when immigration was less popular.

Our operationalization of obfuscation differs from that in the trade literature. In trade, political leaders can use policy complexity to hide their actions, e.g., technical specifications or other non-tariff barriers.<sup>6</sup> In labor immigration, the use of technical barriers may be more difficult: people either come into a country or do not. We, therefore, argue that policymakers, instead of using policy complexity, are more likely to use informal agreements. This is because informal agreements are less likely to require ratification and, therefore, less likely to meet opposition. They are also less likely to be publicized because the press probably does not realize that they have the force of treaties.

To test this idea, we built a new dataset regarding the ease of finding data on BLAs. Since policymakers are unlikely to admit they intentionally hide information, we cannot observe obfuscation directly. To circumvent this issue, we examine whether we are less likely to find information on BLAs when policymakers have an incentive to obfuscate. Using Peters' 2019 dataset<sup>7</sup> as our list of BLAs, we created several measures of how easy it is to find data on these agreements. We code the

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4 Margaret E. Peters, *Immigration and International Law*, 63 INT'L STUD. Q. 281 (2019).

5 Daniel Y. Kono, *Optimal Obfuscation: Democracy and Trade Policy Transparency*, 100 AM. POL. SCI. REV. 369 (2006).

6 *Id.*

7 Peters, *supra* note 4.

type of agreement (whether it is a formal treaty or an informal agreement), the information found, and whether and how easily we could find the agreement texts. To classify agreements, we focus on states' naming conventions: when states call an agreement a "treaty" or a "protocol," we code that as formal, whereas when states call an agreement a bilateral arrangement/framework agreement, an exchange of letters or notes, or a memorandum of understanding, we code that as informal. While all these agreements carry the force of a treaty under the Vienna Convention on the Law of Treaties (hereinafter VCLT),<sup>8</sup> states do not always consider this the case. As we elaborate below, many governments only consider "treaties" and "protocols" to be legally binding, with all other agreements classified as "political agreements."<sup>9</sup> We assume that governments signing these agreements choose these different names for a reason.

We also examine how easy it is to find information about these agreements. We searched for information on all known agreements in English, German, and Tagalog using Google and Korean using the popular search engines Naver and Daum. We searched in English as the dominant language of the Web and in German, Korean, and Tagalog because Austria, Germany, Korea, the Philippines, and Switzerland are the top signatories to these agreements and thus may have information on their own BLAs and BLAs in general. We examine how long it takes to find information about these agreements and what agreements we find.

We find mixed support for our argument. Informality is higher and accessibility lower when immigration is likely to be unpopular and when there is fear of an immigration policy backlash. In addition, we verify the assumed informalization trend in global politics: since 1945, bilateral labor agreements have been increasingly informal and simultaneously less accessible. In contrast to arguments about domestic institutions leading to more informality, like additional veto players and executive constraints, we find that they only have a slight effect on informality and accessibility.

The ability to find information on BLAs is not simply an academic issue. A hallmark of a democratic system is that people can hold their elected leaders accountable for their policy choices in government. But the people need to be able to find information about what the government is doing to hold them to account. Obfuscation challenges this aspect of democratic governance. Further, even if a policy is politically unpopular, policymakers have a duty to explain why a decision is still the correct one to make instead of trying to hide it.

This Article continues as follows. In Part I, we begin with some background on BLAs and then discuss our theory on obfuscation and when it is likely to lead to more informal agreements and less information. In Part II, we present our original data collection on informality and information and discuss our research methods. In Part III, we show the results and discuss the implications for the literature.

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8 Vienna Convention, *supra* note 3.

9 John H. McNeill, *International Agreements: Recent US-UK Practice Concerning the Memorandum of Understanding*, 88 AM. J. INT'L L. 821 (1994).

## I. THEORY: OBSCURING IMMIGRATION

### A. Background on BLAs

A bilateral labor agreement is an agreement between two countries, allowing workers from one country (the sending country) to move to the other country (the receiving country) to work.<sup>10</sup> As we show below, states have titled their agreements in many ways: treaty, protocol, memorandum of understanding (MOU), and exchange of letters, to name just a few. Yet, all these agreements purport to do the same thing.

States have used bilateral labor agreements since the late 1800s. The first recorded BLA that we have found was between South Africa (the Transvaal) and Portuguese officials in Mozambique for mine workers in 1893. This agreement granted the South African Chamber of Mines recruiting privileges in the southern part of Mozambique in exchange for requiring seaborne traffic towards the Competitive Zone in South Africa to pass through a specific Portuguese-held harbor in Mozambique.<sup>11</sup> Since then, BLAs have been signed, for example, between the U.S. and Mexico (the Bracero Program), Turkey and Germany, and, more recently, Japan and the Philippines. What all these agreements have in common is that they were signed primarily to allow for additional immigration into receiving states from specific sending countries. In addition, BLAs have the added benefit of allowing for the quick immigration of particular types of workers, as the sending state or private contractors reduce the transaction costs of recruitment.<sup>12</sup>

We use the data compiled by Peters.<sup>13</sup> She found 779 treaties from 1945 to 2015. Figure 1, reprinted from Peters, shows the distribution of these treaties over time. This is likely an undercount due to the informality and the difficulty of gaining access to information about these agreements. Nevertheless, allows us to see the broad pattern in these agreements. We see three “eras” of agreements: 1945-1973, the “guestworker” era in Europe; 1974-1990, the “lull” in agreements when states in the Middle East signed more agreements; and from 1990 onward, the renewed use of BLAs in Europe and the beginning of their use in Asia.

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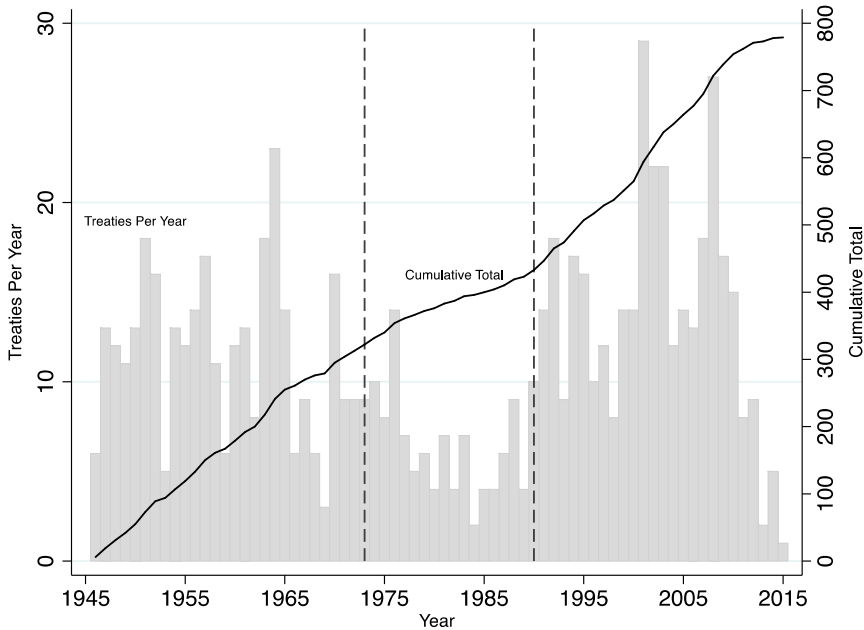
10 Peters, *supra* note 4, at 283. While there were some BLAs in the 1950s and 1960s that allowed migrants to settle permanently, most BLAs only allow workers to stay temporarily. Nonetheless, many of those temporary workers have been able to stay permanently. Christian Joppke, *Why Liberal States Accept Unwanted Immigration*, 50 *WORLD POL.* 266 (1998).

11 MICHAEL J. BOMMARITO ET AL., *WORLD TREATY INDEX* (2011); Marvin Harris, *Labour Emigration Among the Moçambique Thonga: Cultural and Political Factors*, 29 *AFRICA* 50 (1959).

12 Peters, *supra* note 4.

13 *Id.*

Figure 1: Number of treaties per year. Originally from Peters.<sup>14</sup>



### B. Obfuscation to Hide an Unpopular Giveaway to Employers

Much scholarship in law, political science, and other related fields start with the assumption that transparency is a desirable goal. Transparency helps the public monitor what governments are doing and punish leaders who betray the public's trust. Domestic laws have taken this desire into account; in recent years, states have increasingly passed Freedom of Information laws to ensure that the public can access what the government is doing.<sup>15</sup> Transparency has also been thought to be desirable in international relations between states. Openly sharing information can increase cooperation by facilitating coordination, reassuring actors of compliance by other states, and deterring defection from an agreement.<sup>16</sup> It can also help states tie their hands on future behavior, allowing them to credibly commit to a policy.<sup>17</sup> Indeed, similar to the trend in freedom of information laws, international organizations have increased their transparency in recent years.<sup>18</sup>

14 *Id.*

15 Daniel Berliner, *The Political Origins of Transparency*, 76 J. POL. 479 (2014).

16 Allison Carnegie, *Secrecy in International Relations and Foreign Policy*, 24 ANN. REV. POL. SCI. 213, 214 (2021).

17 ALLISON CARNEGIE, *POWER PLAYS: HOW INTERNATIONAL INSTITUTIONS RESHAPE COERCIVE DIPLOMACY* (2015); CHRISTINA L. DAVIS, *WHY ADJUDICATE?* (2012); ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984).

18 JONAS TALLBERG ET AL., *THE OPENING UP OF INTERNATIONAL ORGANIZATIONS* (2013).

Yet, secrecy has always been seen as legitimate in some areas of foreign policy, especially in security. States use secrecy to gain a tactical advantage over a rival; protect sensitive information regarding troop numbers, sources of information, and the like; and preserve norms by not sharing information about violations, for example, by not acknowledging that a state is trying to obtain nuclear weapons if it would lead other states to try to obtain them.<sup>19</sup> The public seems supportive of secrecy in these types of situations; Myrick, for example, finds that the American public is willing to forgo transparency to achieve foreign policy goals.<sup>20</sup>

States also are more likely to use secrecy with their publics if they want to prevent escalating a crisis or avoid destabilizing a situation.<sup>21</sup> For example, election monitors might not immediately publish evidence of election tampering if it might lead to violence and governments might keep violations of the state's airspace secret to prevent war. As BLAs do not typically address crisis situations or situations that could lead to violence, we think that these reasons for secrecy are less relevant.

Governments also have reasons to maintain secrecy or obfuscate in foreign economic policy. Governments might bargain in secret to obtain an agreement that they could not get in the open. For example, many trade agreements rely on issue linkage, or the linking of unpopular policies to more popular policies to ensure passage. In this way, the government can gain support for a trade agreement that it could not get if each piece was negotiated separately.<sup>22</sup> When draft trade agreements have been leaked, they have been less likely to be concluded.<sup>23</sup>

We focus on a second reason why governments may want to act secretly: the desire to enact unpopular policies. In some cases, these policies may be enacted because, while they are unpopular, they are in the interest of the people;<sup>24</sup> for example, the U.S. Government told their citizens to not buy masks at the start of the Covid pandemic because they were worried that individual's purchases would deplete the supply of masks for health care workers or that people would stop taking precautions if they had masks.<sup>25</sup> Yet, in other cases, governments hide information to act in their own interests;<sup>26</sup> for example, the U.S. government hides information about aid to autocratic governments over concerns of being called out for hypocrisy.<sup>27</sup> Similarly,

19 Carnegie, *supra* note 16, at 220-22.

20 Rachel Myrick, *Why So Secretive? Unpacking Public Attitudes toward Secrecy and Success in U.S. Foreign Policy*, 82 J. POL. 828 (2020).

21 Allison Carnegie, *Secrecy in International Relations and Foreign Policy*, 24 ANN. REV. POL. SCI. 213, 217, 219-20 (2021).

22 Christina L. Davis, *International Institutions and Issue Linkage: Building Support for Agricultural Trade Liberalization*, 98 AM. POL. SCI. REV. 153 (2004).

23 Matthew Castle & Krzysztof J. Pelc, *The Causes and Effects of Leaks in International Negotiations*, 63 INT'L STUD. Q. 1147 (2019).

24 HANS JOACHIM MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (1948).

25 Megan Molteni & Adam Rogers, *How Masks Went From Don't-Wear to Must-Have*, WIRED (July 2, 2020, 4:11 PM), <https://www.wired.com/story/how-masks-went-from-dont-wear-to-must-have/>.

26 ANTHONY DOWNS, *INSIDE BUREAUCRACY* (1967).

27 Axel Dreher et al., *Buying Votes and International Organizations: The Dirty Work-Hypothesis* (Ctr. Econ. Pol'y Rsch., Discussion Paper No. DP13290, Oct. 2018), <https://ssrn.com/abstract=3278665>.

states also send secret signals to adversaries about an unpopular policy, knowing that the leader will be punished if the information is leaked. This information, then, can be a credible signal about behavior. Further, private information can be more tailored to a specific audience and be more effective.<sup>28</sup> While BLAs are not always negotiated with adversaries and are not secret, confidentiality could help the state lock in an unpopular policy.

We argue that secrecy—or in our case, obfuscation—is driven by a desire of a government to deliver a policy to an important interest group that is not generally politically popular. BLAs do not impact security, unlike agreements on border enforcement which might at least touch on the need to keep violent actors out of the state. Unlike our example of masking during Covid, it is not clear that BLAs are in the interest of “the people.” Instead, we argue that they are often a special carve-out for specific interest groups.

Our theory starts with the assumption that political leaders want to retain office and so pursue policies that ensure their continued tenure in office. In democracies, political leaders balance the contributions of political capital from special interests, including campaign contributions, lobbying, and get-out-the-vote drives, against the preferences of their constituents.<sup>29</sup> In autocracies, political leaders balance the preferences of the elite—however construed—with the need to prevent mass revolt.<sup>30</sup> In either type of regime, then, political leaders balance the preferences of interest groups against those of the mass public.

We focus in this Article on the incentives of the labor-receiving state. As noted by Peters, labor-receiving states have more leverage in negotiations because they control access to their state.<sup>31</sup> We therefore argue that they have the power to determine the formality and, perhaps, the accessibility of the agreement. In contrast, if the labor-sending side had more power in the relationship, we would expect these treaties to be formalized and publicized much more widely.<sup>32</sup> For the many sending state citizens, BLAs represent a new economic opportunity and are likely to be popular, so we would expect leading politicians to want to publicize them to take the credit and formalize them to lock in gains.<sup>33</sup>

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28 Carnegie, *supra* note 21, at 219.

29 GENE M. GROSSMAN & ELHANAN HELPMAN, SPECIAL INTEREST POLITICS (2001).

30 BRUCE BUENO DE MESQUITA ET AL., THE LOGIC OF POLITICAL SURVIVAL (2003).

31 Peters, *supra* note 4.

32 For arguments about how the balance of power may affect whether an agreement is legally binding, see Aust, *supra* note 3, at 805.

33 For estimates on the increase in wages a migrant could make under a BLA see TIMOTHY J. HATTON & JEFFREY G. WILLIAMSON, GLOBAL MIGRATION AND THE WORLD ECONOMY (2005); Christian Dustmann & Ian P. Preston, *Free Movement, Open Borders, and the Global Gains from Labor Mobility*, 11 ANN. REV. ECON. 783 (2019). On the desire to migrant under a BLA, for example, 1.43 million Bangladeshis applied for one of 30,000 visas under a BLA between Malaysia and Bangladesh in 2013. Ahmed Mushfiq Mobarak et al., *Returns to International Migration: Evidence from a Bangladesh-Malaysia Visa Lottery* (IZA Inst. Lab. Econ., Discussion Paper No. 14232, Mar. 2021), <https://docs.iza.org/dp14232.pdf>. On worldwide demand to emigrate see DAVID LEBLANG & BENJAMIN HELMS, THE TIES THAT BIND: IMMIGRATION AND THE GLOBAL POLITICAL ECONOMY 19 (2022). Governments have also changed how they view emigration from a loss of citizens to a potential boon in remittances, see *id.* at 132.

In the case of BLAs, we argue that they are supported by some members of the elite but are likely to be opposed by at least some of the public. BLAs are signed to bring in labor when immigrants are unlikely to come to the state otherwise.<sup>34</sup> These agreements are effective; based on available migration data, Peters finds that once put into force, all these agreements—regardless of type—created new flows of migrant labor.<sup>35</sup> As such, they represent a circumvention of the current immigration policy. They are often targeted at a specific sector of the economy or a specific industry.<sup>36</sup> They may provide workers to an industry that is unwilling to pay high enough wages to attract domestic workers or cannot find sufficient workers with the requisite skill set domestically. In other cases as, for example, the guestworker programs of the 1960s, BLAs have been signed when domestic unemployment was extremely low. These programs represent a benefit to employers, providing them with labor that would not be available otherwise at the price they are willing to pay.

Nonetheless, in most countries immigration is usually a controversial issue. While support for immigration in the Global North has been increasing over the last 20 years,<sup>37</sup> there is very vocal opposition too. People may be wary of immigrants taking their jobs,<sup>38</sup> their potential fiscal costs,<sup>39</sup> their effects on the overall economy,<sup>40</sup> their effects on politics,<sup>41</sup> or their effects on the national culture.<sup>42</sup> Frequently, only co-ethnics and businesses support immigration.<sup>43</sup> Thus, while politicians may want to provide elites with access to immigrant workers, they may be less than forthcoming about their plans to do so. The opposition, then, provides the incentive to obfuscate.

### C. Informality & Labor Migration

One-way governments may try to obfuscate is through the informality of an agreement. In political science, informality in international law has been thought to consist of *soft law*, where countries codify agreements in a nonbinding way;<sup>44</sup> *informal governance*, which includes the norms and procedures that govern decision-making

34 Peters, *supra* note 4.

35 Peters, *supra* note 4, at 283.

36 *Id.*

37 David Leblang & Margaret E. Peters, *Immigration and Globalization (and Deglobalization)*, 25 ANN. REV. POL. SCI. 377 (2022).

38 Alan S. Gerber et al., *Self-interest, Beliefs, and Policy Opinions: Understanding How Economic Beliefs Affect Immigration Policy Preferences*, 70 POL. RSCH. Q. 155 (2017); Anna Maria Mayda, *Why are People More Pro-trade than Pro-migration?*, 101 ECON. LETTERS 160 (2008).

39 Gordon H. Hanson et al., *Public Finance and Individual Preferences Over Globalization Strategies*, 19 ECON. POL. 1 (2007).

40 Jens Hainmueller & Michael J. Hiscox, *Attitudes Toward Highly Skilled and Low-skilled Immigration: Evidence from a Survey Experiment*, 104 AM. POL. SCI. REV. 1 (2010).

41 Alisha C. Holland et al., *Left Out: How Political Ideology Affects Support for Migrants in Colombia* (Mar. 12, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3803052](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3803052).

42 DAVID MILLER, *STRANGERS IN OUR MIDST* (2017).

43 Gary P. Freeman, *Modes of Immigration Politics in Liberal Democratic States*, 29 INT'L MIGRATION REV. 881 (1995); MARGARET E. PETERS, *TRADING BARRIERS: IMMIGRATION AND THE REMAKING OF GLOBALIZATION* (2017).

44 Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421 (2000).



beyond formal rules; and *informal intergovernmental organizations* (IIGOs), which are organizations that do not have a treaty or secretariat.<sup>45</sup> Most BLAs fit in the category of soft law and IIGOs. They are essentially frameworks on migration and typically do not specify the number of workers who are to move between states each year. Thus, they do not actually bind states in terms of sending migrants—their main *raison d'être*. They often create (in 51% of the agreements analyzed by Peters)<sup>46</sup> an organization to help implement these agreements, but these organizations, like most IIGOs, have neither a secretariat nor their own charter.

While Political Science considers these agreements to be soft law and to create IIGOs, international law considers them to have the force of treaties: the VCLT considers all agreements that are written down and that states have expressed intent to be bound by to be treaties.<sup>47</sup> States have conflicting views on the matter. For example, in 1990, Great Britain argued that its 1983 MOU with the United States, *Heathrow Airport User Charges*, was not a legally binding agreement.<sup>48</sup> Further, at times the governments of Canada, Australia, and the UK have claimed that MOUs are “gentleman’s agreements” and not of a legally binding nature,<sup>49</sup> but merely “politically binding.”<sup>50</sup> The U.S., on the other hand, believes that MOUs are legally binding. It refused to continue to negotiate MOUs with these three states, demanding legally binding agreements instead; nonetheless, the U.S. has continued to assume that MOUs with other states are legally binding.<sup>51</sup> Yet, even the U.S. has acknowledged that not all agreements have the force of law. In the 1981 *International Agreement Regulations* of the U.S. Department of State, the U.S. argued that “undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally international agreements.”<sup>52</sup>

Politics has also affected how treaties are defined in international law. For example, the International Law Commission in 1965 tried to define “treaties in simplified form” as “a treaty concluded by exchange of letters, agreed minutes, memorandum of understanding, joint declaration or other instrument concluded by any similar procedure,” but omitted this from its draft articles because of opposition from numerous governments.<sup>53</sup> Even the VCLT relies on states expressing “a consent to be bound,”<sup>54</sup> which, given that there is no world government to enforce agreements, allows states to argue that they did not consent. Because of the debate over whether agreements that are not formally titled “treaties” or “protocols” are legally binding, we argue that only these two types of agreements are universally recognized *by governments*

45 Felicity Vabulas, *Informality in International Political Economy*, in OXFORD HANDBOOK OF INTERNATIONAL POLITICAL ECONOMY 1 (Jon Pevehouse & Leonard Seabrooke eds., 2020).

46 Peters, *supra* note 4, at 283.

47 Vienna Convention, *supra* note 3, art. 2(1)(a), 11-17.

48 McNeill, *supra* note 9, at 822.

49 *Id.*

50 *Id.* at 825.

51 *Id.* at 822-23.

52 Aust, *supra* note 3, at 798.

53 *Id.* at 795.

54 Vienna Convention, *supra* note 3.

as formal, legally binding agreements, and henceforth shall refer to them both, and only to them, as *treaties*, even if other types of agreements are legally binding under *international law*. We refer to all other agreements as *informal agreements*.

States turn to informality for several reasons. First, it is faster to agree to and implement an informal agreement.<sup>55</sup> In many countries, formal treaties need to be ratified to enter into force in domestic law. The ratification process takes both time and political will.<sup>56</sup> States may have several veto players who have to agree to ratify a treaty, making it more difficult to get an agreement that will satisfy them all.<sup>57</sup> For example, we see in the U.S. that trade agreements, like other congressional-executive agreements that are ratified based on a simple majority vote, are much easier to get ratified than treaties that require a two-thirds vote in the U.S. Senate. Even if a treaty does not need to be ratified, there may be other internal constitutional procedures required that can be elaborate and lengthy.<sup>58</sup>

Second, formality and ratification can draw more attention to an international agreement. If a state's legislature must ratify a treaty, it means that there will likely be debate and a vote on the agreement, drawing more attention to it from the media.<sup>59</sup> This attention can be good, if the government wants to signal its commitment to a policy. But if a policy is unpopular, formality can be problematic. Additionally, if an agreement is listed as a formal "treaty" there may be a requirement to publish it. However, if the type of agreement is less formal, states argue that they are not required under the VCLT to deposit the agreement text.<sup>60</sup> This is especially the case with political arrangements or memoranda of understanding (MOUs).<sup>61</sup> In the UK, for example, treaties must be published in the Command Papers and in the Treaty Series of Command Papers, whereas informal instruments are not subject to any such requirement.<sup>62</sup> An informal agreement can therefore be kept confidential,<sup>63</sup> in practice, however, BLAs involve many individuals—employers, migrants, and government officials—so while they may be confidential, they are not secret.

Third, informality provides more flexibility. There is a tradeoff between the rigidity and stability of treaties: more rigid treaties—those in which states make more binding commitments—help to ensure compliance but may prompt more states to abandon them altogether when they cannot comply.<sup>64</sup> Greater informality allows states to

55 Aust, *supra* note 3, at 789.

56 For a review of the literature, see Vabulas, *supra* note 44.

57 Vabulas, *supra* note 44; Lisa L. Martin, *The President and International Commitments: Treaties as Signaling Devices*, 35(3) PRESIDENTIAL STUD. Q. 440 (2005).

58 Aust, *supra* note 3, at 789.

59 Julian Nyarko, *Giving the Treaty a Purpose: Comparing the Durability of Treaties and Executive Agreements*, 113 AM. J. INT'L L. 54 (2019).

60 McNeill, *supra* note 9.

61 PIYASIRI WICKRAMASEKARA, INTERNATIONAL LABOUR OFFICE, *BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING ON MIGRATION OF LOW SKILLED WORKERS: A REVIEW REPORT PREPARED FOR THE LABOUR MIGRATION BRANCH* (2015); Vara, *supra* note 61; Lipson, *supra* note 59.

62 Aust, *supra* note 3, at 789-90.

63 *Id.* at 793.

64 Peter B. Rosendorff & Helen V. Milner, *The Optimal Design of International Trade Institutions: Uncertainty and Escape*, 55 INT'L ORG. 829 (2001).

gain flexibility and decrease their level of obligation.<sup>65</sup> Because informal treaties are less binding by definition, they can be deeper in terms of cooperation.<sup>66</sup> As states can more easily exit an informal agreement, they can make stronger commitments to comply with it when times are good but can likewise ignore it when times are bad.<sup>67</sup> It is not surprising, then, that soft law and informality are the most prominent features of international relations between states.<sup>68</sup>

Flexibility and informality in labor migration likely offer high benefits for several reasons, increasing the use of informal agreements. As noted, immigration (and, at times, emigration) is a controversial policy area; even when most voters support immigration, as has been the case in the U.S. in the last few years,<sup>69</sup> others may be vehemently opposed to it. Because of the controversial nature of immigration, it may be hard for governments to get treaties on immigration ratified or complete the tasks needed to formally accept a treaty. For example, in the U.S., since 2006, presidents have tried and failed multiple times to get a comprehensive immigration reform bill passed. In Europe, EU countries have been unable to agree on more comprehensive reforms to refugee admissions and an overall immigration strategy. This suggests that states may prefer informality when they are concerned that they will not be able to ratify a formal treaty.

Additionally, policymakers may be wary of tying their hands too tightly on immigration<sup>70</sup> and prefer the flexibility of more informal agreements. On the one hand, greater formality could help lock in the gains of the agreement for the winners of the policy change.<sup>71</sup> But on the other hand, formality does not allow governments flexibility when they need it.<sup>72</sup> As economic or security conditions change on the ground, states want to be able to change their immigration policy. When push came to shove with the 2015 increase in asylum seekers, for instance, many EU countries rolled back their commitment to the Schengen Area, damaging their reputation on their commitment to the EU.<sup>73</sup> Informality also allows (heads of) states to avoid

65 Abbott & Snidal, *supra* note 43.

66 Leslie Johns, *Depth Versus Rigidity in the Design of International Trade Agreements*, 26 J. THEORETICAL POL. 468 (2014).

67 Nyarko, *supra* note 58.

68 Abbott & Snidal, *supra* note 43; Andrew T. Guzman & Timothy L. Meyer, *International Soft Law*, 2 J. LEGAL ANALYSIS 171 (2010); CHARLES B. ROGER, *THE ORIGINS OF INFORMALITY: WHY THE LEGAL FOUNDATIONS OF GLOBAL GOVERNANCE ARE SHIFTING, AND WHY IT MATTERS* (2020).

69 Mohamed Younis, *Americans Want More, Not Less, Immigration for First Time*, GALLUP (Jul. 1, 2020), <https://news.gallup.com/poll/313106/americans-not-less-immigration-first-time.aspx>; Leblang & Peters, *supra* note 36.

70 Peters, *supra* note 4.

71 Michael A. Bailey et al., *The Institutional Roots of American Trade Policy: Politics, Coalitions, and International Trade*, 49 WORLD POL. 309 (1997); Helen V. Milner, *Trading Places: Industries for Free Trade*, 40 WORLD POL. 350 (1988).

72 This is similar to the rigidity-stability tradeoff, as noted by LESLIE JOHNS, *STRENGTHENING INTERNATIONAL COURTS: THE HIDDEN COSTS OF LEGALIZATION* (2015); Rosendorff & Milner, *supra* note 63.

73 The Schengen Area consists of 26 member states that have abolished all passport and other border controls at their mutual borders, allowing for free travel inside the zone. In 2015, when approximately one million migrants from forced displacement crises arrived in Europe, many states reimposed border and passport controls. Many of these states reimposed border controls with the COVID-19 pandemic as well.

being held accountable for commitments made to other parties as well as national audiences.<sup>74</sup> A forward-looking politician, then, is likely to choose greater informality the less popular the policy choice is, or the less popular it could become.

#### *D. Obfuscation*

In addition to the use of informality to provide the flexibility needed to change course in labor migration, we argue that policymakers, more malignly, may seek to use BLAs to obfuscate the policy change to avoid backlash from the public. Obfuscation is easier when governments opt for less formal means of cooperation.<sup>75</sup> As noted above, with greater informality, BLAs are less likely to be publicized, since they do not need to go through ratification and do not necessarily need to be published.<sup>76</sup> Incumbents, then, can obfuscate by holding back information on a given BLA from the press, make access to the agreement text complicated for the majority of constituents, or simply not reporting the agreement to the parliament or the U.N. Further, because BLAs represent a change made through executive action, rather than through the legislature, they may be less apparent to opposition groups and parties. Finally, because they can be technical in terms of which positions or industries qualify under the BLA, it can be harder for a voter to understand the likely effects of the BLA.

We argue that obfuscation is often a winning strategy in both democracies and most autocracies. It is commonly argued that democracies exhibit higher levels of transparency than autocracies.<sup>77</sup> Kono, on the other hand, contends that democracies have a greater incentive to obfuscate because it is easier to vote the leader out of office.<sup>78</sup> In fact, we argue that both democratic and autocratic governments choose to obfuscate agreements that could be detrimental to their political survival. In democracies and civilian autocracies, states hide information on BLAs to prevent a popular backlash. This suggests that information about these agreements will be more available when immigration is more popular, as it would generate less of a backlash. In “purer” forms of autocracy, the state simply does not provide information on most policies.

#### *E. Alternative Explanations from the Literature*

There is extensive literature on the use of informal agreements in international relations. The first alternative explanation is that informality has been increasingly used by all states in more recent years. Because of the benefits of informality, it

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74 Charles Lipson, *Why are Some International Agreements Informal?*, 45 INT’L ORG. 45 (1991).

75 Juan Santos Vara, *Soft International Agreements on Migration Cooperation with Third Countries: A Challenge to Democratic and Judicial Controls in the EU: Legality, Rule of Law and Fundamental Rights Reconsidered*, in CONSTITUTIONALISING THE EXTERNAL DIMENSIONS OF EU MIGRATION POLICIES IN TIMES OF CRISIS 19 (Sergio Carrera et al. eds., 2019).

76 Aust, *supra* note 3, at 789-90.

77 BUENO DE MESQUITA ET AL., *supra* note 29.

78 Kono, *supra* note 5.

has been increasing, especially in the last two decades, as formal institutions have tended to stagnate.<sup>79</sup> Increasingly, states seem to want to protect their sovereignty and retain flexibility in times of uncertainty.<sup>80</sup> For example, some states have left bilateral investment treaties (BITs) that forced them to go to international arbitration.<sup>81</sup> This broader trend likely applies to BLAs. As noted above, immigration—and emigration to a lesser degree—is a policy area in which states guard their sovereignty. In our analysis below, we control for these over-time trends.

A second alternative focuses on regional differences. As noted first by Peng, the nature of globalization has been more informal and market-actor oriented in East Asian economies than in Europe.<sup>82</sup> Similarly, Acharya argues that there is an “ASEAN way” of international cooperation based on informality and consultation.<sup>83</sup> Because the norm in East Asia has been market-actor driven and informal, we expect bilateral labor agreements to follow a similar informal structure.<sup>84</sup> We control for region in our analysis as well.

Third, immigration has been seen by some scholars as the last bastion of sovereignty in an increasingly globalized world.<sup>85</sup> As states have opened their borders to trade, they have maintained control over immigration as a way to project their sovereignty.<sup>86</sup> Concerns over sovereignty may explain why states want to use more informal agreements: if, as Aust argues, states see informal agreements as “political agreements” and not legally binding ones,<sup>87</sup> they are more likely to use informality when concluding BLAs. This would give them greater flexibility to end an agreement. While we agree that maintaining control over borders can be important for political reasons, sovereignty concerns do not explain why states would want to obfuscate in some cases but not in others. This alternative would suggest that as globalization has increased, informality in agreements should increase. We again operationalize this as more recent agreements should be more likely to be informal.

In contrast, states might want to use formality to lock in gains or make stronger commitments. If this is the case, we would expect that formal agreements have a

79 Felicity Vabulas & Duncan Snidal, *Cooperation Under Autonomy: Building and Analyzing the Informal Intergovernmental Organizations 2.0 Dataset*, 58 J. PEACE RESOL. 859 (2020).

80 Vabulas, *supra* note 44.

81 Beth A. Simmons, *Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment*, 66 WORLD POL. 12 (2014).

82 Dajin Peng, *Invisible Linkages: A Regional Perspective of East Asian Political Economy*, 46 INT’L STUD. Q. 423 (2002).

83 AMITAV ACHARYA, *CONSTRUCTING A SECURITY COMMUNITY IN SOUTHEAST ASIA: ASEAN AND THE PROBLEM OF REGIONAL ORDER* (2014).

84 *But see* Vabulas & Snidal, *supra* note 78, for evidence that informality is increasing around the globe.

85 The canonical work on this topic is by Saskia Sassen, including SASKIA SASSEN, *LOSING CONTROL?: SOVEREIGNTY IN THE AGE OF GLOBALIZATION* (1996); Saskia Sassen, *Transnational Economies and National Migration Policies*, in *FREE MARKETS, OPEN SOCIETIES, CLOSED BORDERS? TRENDS IN INTERNATIONAL MIGRATION AND IMMIGRATION POLICY IN THE AMERICAS* 7 (Max J. Castro ed., 1999). *See also* Mary Bosworth, *Border Control and the Limits of the Sovereign State*, 17 SOC. & LEGAL STUD. 199 (2008); Christopher Rudolph, *Sovereignty and Territorial Borders in a Global Age*, 7 INT’L STUD. REV. 1 (2005).

86 SASSEN, *supra* note 83.

87 Aust, *supra* note 3.

greater effect on the number of migrants.<sup>88</sup> On the other hand, informality may allow states to have a deeper commitment, which suggest informal agreements should lead to a greater number of migrants.<sup>89</sup> Our theory suggests that there should be no effect of the level of formality on migrant flows because formality is used to obfuscate agreements from the public, not to control flows. Below, we examine whether there is an effect of the level of formality on migrant stocks or flows.

## II. METHODS

We cannot directly measure the level of obfuscation empirically, as we cannot get into policymakers' heads. Rather, we examine the link between accessibility and informality to lend plausibility to the argument that obfuscation is at play and explains the difficulty of finding information on some BLAs.

To test our argument, we have constructed a dataset of the informality and accessibility of BLAs. We begin with the list of the BLAs compiled by Peters,<sup>90</sup> which at the time of writing was, to our knowledge, the most comprehensive.<sup>91</sup> The dataset included all known BLAs. She compiled her dataset from the UN Treaty Series, IOM dataset, and secondary sources.<sup>92</sup> Included in the dataset are only treaties that specifically address the movement of migrants for labor purposes. Treaties on refugees, repatriation of migrants, undocumented migrants, or the rights of migrants are not included.<sup>93</sup>

We then coded the accessibility and informality of these treaties. We note, however, that we likely do not have the full set of agreements and are missing the most inaccessible ones. These agreements are likely to be less formal as well, as more

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88 Abbott & Snidal, *supra* note 43.

89 Peter B. Rosendorff & Helen V. Milner, *The Optimal Design of International Trade Institutions: Uncertainty and Escape*, 55 INT'L ORG. 829 (2001).

90 Peters, *supra* note 4.

91 Chilton and Woda have compiled a more comprehensive list of agreements, but it was not available at the time of writing this Article. Adam Chilton & Bartosz Woda, *The Expanding Universe of Bilateral Labor Agreements*, 23 THEORETICAL INQUIRIES L. 1 (2022).

92 Al Tamimi & Company, *International Agreements & Conventions UAE 1971-2004* (2010), <https://www.yumpu.com/en/document/read/51313586/international-agreementpdf-italian-industry-commerce-office-in-> (last visited Apr. 26, 2022); Tanya Basok, *Canada's Temporary Migration Program: A Model Despite Flaws*, MIGRATION INFO. SOURCE (Nov. 12, 2007), <https://www.migrationpolicy.org/article/canadas-temporary-migration-program-model-despite-flaws>; BOMMARITO ET AL., *supra* note 11; HEATHER BOOTH, *THE MIGRATION PROCESS IN BRITAIN AND WEST GERMANY: TWO DEMOGRAPHIC STUDIES OF MIGRANT POPULATIONS* (1992); Adam S. Chilton & Eric A. Posner, *Why Countries Sign Bilateral Labor Agreements*, 47 J. LEGAL STUD. 45 (2018); ANDREW GEDDES, *THE POLITICS OF MIGRATION AND IMMIGRATION IN EUROPE* (2003); Christine Adam & Alexandre Devillard, *Comparative Study of the Laws for Legal Immigration in the 27 EU Member States—Including an Assessment of the Conditions and Formalities Imposed by each Member State for Newcomers* (Eur. Parliament, Study PE 393.281, Feb. 2008), [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2008/393281/IPOL-LIBE\\_ET\(2008\)393281\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2008/393281/IPOL-LIBE_ET(2008)393281_EN.pdf); BARBARA MARSHALL, *THE NEW GERMANY AND MIGRATION IN EUROPE* (2000); OECD, *MIGRATION FOR EMPLOYMENT: BILATERAL AGREEMENTS AT A CROSSROADS* (2004), <https://doi.org/10.1787/9789264108684-en>; PETER H. ROHN, *WORLD TREATY INDEX* (1983); THE UNITED NATIONS, *UNITED NATIONS TREATY COLLECTION* (2011).

93 Peters, *supra* note 4, at 283.

formal treaties are typically more accessible. From this list of treaties, we coded how accessible each is and its level of formality.

### A. Coding the Accessibility & Formality of Agreements

We coded several different attributes of the accessibility and formality of agreements. First, to understand the level of formality, we coded the type of agreement using its title. The line between treaties and other bilateral agreements is oftentimes hard to distinguish, as the naming of treaties is a subjective act in itself.<sup>94</sup> Therefore, we coded the type of agreement based on the title of the agreement text. The distinction between these different agreement types is based on the idea that the first type of agreements (treaties and protocols) is regarded as legally binding by state signatories, whereas the second category of agreements (everything else) is thought of as “political ‘arrangements’ or ‘understandings,’”<sup>95</sup> even though the contents of these agreements may be similar or identical. In many cases, especially if the agreement text could not be found, the type of agreement could not be clearly identified or distinguished. Nevertheless, we were able to conclude the agreement type of approximately 65% of the agreements by using our technique. From this data we created the variable, *informality*, with a value of 0 for formal agreements such as treaties and treaty protocols, 1 for informal agreements such as MOUs, exchanges of notes (where it is not specified that they constitute agreements) and framework agreements or bilateral arrangements,<sup>96</sup> and 2 if we could not classify the agreement type.

Next, as our first measure of accessibility of agreements, we coded the minutes it took us to find an agreement text via an internet search, similar to what the average citizen (or even reporter) would do. We searched in four languages, using the most popular search engine(s) in that language. We searched in English, the top language of the Web,<sup>97</sup> using Google, the dominant search engine.<sup>98</sup> Nonetheless, the use of English may bias our results, especially as major English-speaking states like the U.S. and UK have not signed many BLAs. We therefore chose to search in an additional three languages—German, Korean, and Tagalog—to see whether the data coverage was better in these languages. We chose German because Austria, Germany and Switzerland have been among the top signatories of BLAs. We searched in German using the Google search engine. Similarly, we searched in Korean using the Naver and Daum search engines and in Tagalog using the Google search engine.<sup>99</sup> We chose Korean because South Korea has entered into 15 BLAs as a receiving state in

94 Denya B. Myers, *The Names and Scope of Treaties*, 51 AM. J. INT’L L. 33 (1957).

95 ROGER, *supra* note 67.

96 For our searches in German, Korean and Tagalog, we translated the categories of the types of agreements directly and assumed that they correspond with our dichotomous variable of formality (see Annex).

97 Holly Young, *The Digital Language Divide: How Does the Language You Speak Shape Your Experience of the Internet?*, THE GUARDIAN (2021), <http://labs.theguardian.com/digital-language-divide/>.

98 Jennifer Elias, *Google ‘Overwhelmingly’ Dominates Search Market, Antitrust Committee States*, CNBC (Oct. 6, 2020, 8:11 PM), <https://www.cnbc.com/2020/10/06/google-overwhelmingly-dominates-search-market-house-committee-finds.html>.

99 For the Korean and Tagalog searches, we hired undergraduate RAs who were either native or fluent speakers of the two languages.

the last twenty years<sup>100</sup> and has become an important new receiving state. We chose Tagalog because of the Philippines' importance as a sending country. To be clear, we searched for the BLAs involving any country in all four languages; for example, we searched for information on the 1964 Netherlands-Morocco BLA in English, German, Korean, and Tagalog.

For each search, we entered the title of the agreement, the year of signing, and the state parties to the agreement. If, after ten minutes, we could not find the agreement text, we turned to the UN treaty series database. If we could not find the agreement text there, we concluded that the agreement text cannot be found (easily) via online research. From this data, we created the variable, *Ease of Access*, which takes the value 0 if the time to find the information was under the median of three minutes, 1 if the time spent looking for information was longer than three minutes, and 2 if no (new) information on the agreement could be found.<sup>101</sup>

Our location, search history, and other individual factors may have affected our results. As noted above, we searched using three different search engines, Google, Naver, and Daum, and in four different languages, English, German, Korean, and Tagalog. We also searched from different locations: Berlin, Germany; Belgrade, Serbia; Los Angeles and the Bay Area, CA, U.S.; and near Seoul, South Korea. Over time, it is possible that our search engines began to learn what we were looking for and could provide better results; however, members of the research teams were given different sets of agreements to start with and the results were similar. We therefore do not think the search process biased our results in any meaningful way.

Regarding accessibility, as an additional category we looked at the type of information we could find on an agreement in addition to the agreement text. We distinguished between press releases, research on the topic, as well as speeches by government bodies and/or political representatives. Naturally, in the instances where we could not find the agreement text, other types of information on the agreement were also harder to find.<sup>102</sup> Since in most instances where the agreement text could not be found, we also could not find any additional information source, we chose to create the dichotomous variable *Text found* as a first measure of accessibility. This variable takes the value 0 if the agreement text could not be found and 1 if the agreement text could be found. In addition, we created the variable *Sources of Information*, which takes the value 0 if we could find zero to two types of information sources, and 1 if we could find two or more types of sources of information.<sup>103</sup>

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100 Peters, *supra* note 4.

101 Of course, we know that we can find some information on these agreements as Peters *id.*, was able to originally find. We are therefore trying to see if we can find information about them *just* by searching in Google as a non-researcher would do.

102 In some instances, however, looking at additional information and especially research on the topic, we could identify at least the type of agreement we were dealing with.

103 Again, this is in addition to the sources in Peters, *supra* note 4. As we looked for four types of sources specifically (text, press release, speech and research), the maximum number of sources that could be found were 4 and the minimum 0. Overall, we could not find any source of information for 480 agreements, and for 252 agreements we could only find one source of information. We found 72 agreements with two sources of information, 66 with 3 sources, and only 1 agreement with 4 sources of information. We



### B. Hypotheses & Explanatory Variables

The above discussion leads to hypotheses about both the formality and the accessibility of information on BLAs. BLAs are more likely to be informal when it is difficult to ratify a treaty, when immigration is unpopular, or when states fear a decline in popularity for immigration in the future. It is harder to access information on BLAs the less popular immigration is, and it should be equally hard to access information in democracies and autocracies.

We now turn to our hypotheses. Table 1 lists our hypotheses and how we operationalize them. Our first hypothesis examines the role of veto players. We argue that states with many veto players tend to sign less formal agreements. To test this, we use Henisz's measure of *political constraints* as a measure of veto players.<sup>104</sup>

Table 1: Our hypotheses and their operationalization

	Hypothesis	Operationalization
H1	BLAs will be more informal when ratification is more difficult.	Number of veto players
H2	BLAs will be more informal when immigration is less popular.	Conditions that make immigration less popular: —Higher unemployment in the receiving state —Greater support for the far right in the receiving state —Greater employment growth in the sending state
H3	Formalization will be greater when policymakers seek to lock in greater immigration openness.	Governments that cannot credibly commit: —Personalist dictatorships —Fewer executive constraints
H4	Formalization is less likely when there is greater uncertainty about future support for immigration or there is concern about a backlash.	Poorer/less educated immigrants are more likely to cause a backlash —Ratio of GDP per capita of sending and receiving states —Average schooling in the sending state —Lack of a shared language between the receiving and sending state —Former colonial relationship between the receiving and sending state

therefore used a binary classification into “zero to two sources” and “two and more sources” to capture the degree of available information and, consequently, the accessibility of an agreement. This variable is meant to supplement the *text found* variable and to give us an additional measure of accessibility to support our results.

104 Witold J. Henisz, *The Institutional Environment for Infrastructure Investment*, 11 IND. CORP. CHANGE 355 (2002).

	Hypothesis	Operationalization
H5	Democracies and civilian autocracies should have greater levels of informality of agreements concluded than military or personalist dictatorships.	Regime type
H6	Information about BLAs will be less accessible when immigration is less popular.	Conditions that make immigration less popular: —Greater unemployment —Low economic growth —Support for the far-right
H7	All types of regimes have reason to hide information about BLAs, but those reasons differ.	Regime type
Control	Informality across many domains has increased over time.	Indicator for time
Control	Informality is higher in Asia.	Indicator for region

Next we include variables that measure the likely attitude towards immigrants. We argue that BLAs should be more informal and less accessible when immigration is unpopular. Immigration is likely to be more unpopular when unemployment is higher. To measure unemployment, we use *employment over population* from Peters, as this measure has the best coverage for our data.<sup>105</sup> In addition, we examine the size of support for the *far right* with the vote share of far right parties.<sup>106</sup> While we have mostly focused on the receiving country, we also look at the effect of *employment growth in the sending country*. The sending country's government should have the opposite incentives of the receiving country: when the economy is growing slowly (i.e., employment growth is low), the sending country should want to formalize and publicize a BLA to show that it is doing something to help its people. In contrast, when the sending country's economy is running hot (i.e., employment growth is high), the sending country should want an informal agreement and whilst keeping it quiet so as not to upset domestic employers worried about losing their workers to companies abroad.

To understand whether leaders want to lock in immigration policy through a formal agreement, we examine the ability of states to credibly commit to policies domestically. We use two measures: first, autocracies cannot commit to following international law as well as democracies because of the lack of a free press, a real opposition, and independent courts.<sup>107</sup> This suggests that autocracies, especially

105 Peters, *supra* note 4.

106 Data originally from David H. Bearce & Andrew F. Hart, *International Labor Mobility and the Variety of Democratic Political Institutions*, 71 INT'L ORG. 65 (2017). Downloaded from Benjamin A.T. Graham & Jacob R. Tucker, *The International Political Economy Data Resource*, HARV. DATAVERSE, V4 (2016), <https://doi.org/10.7910/DVN/Xo93TV>.

107 Beth A. Simmons, *The International Investment Regime since the 1980s: A Transnational "Hands-Tying" Regime for International Investment* (Aug. 22, 2011), <https://ssrn.com/abstract=1914448>.

*personalist dictatorships*, should be more likely to formalize treaties. We use the regime coding from Geddes.<sup>108</sup> Second, we use the measure of *executive constraints* from Polity IV.<sup>109</sup> Policymakers in states with fewer executive constraints should want a formal treaty to lock in their policy, since future leaders can easily change domestic policy.

We also argue that greater uncertainty about future opinions and concerns about backlash should lead to the use of more informal treaties. Backlash will be likely to occur when large flows of “dissimilar” immigrants enter the state. We measure “dissimilar” in terms of both economic position and culture. The public in the receiving state typically opposes low-wage/less educated immigrants more than high-wage/more educated immigrants.<sup>110</sup> We expect that when the sending state is much poorer than the receiving state, the agreement will spark greater backlash; we measure the relative economic position as the *ratio of the GDP per capita* of the sending state to the receiving state. When the ratio decreases (meaning that the receiving state is much wealthier than the sending state), we expect more backlash and greater use of informality.

Similarly, if the sending state has a less educated population on average, we expect that their citizens will be stereotyped as low-wage/less educated, even if the migrants are mostly highly educated individuals, and that a backlash is more likely. To measure education, we use the variable *schooling for the population 25 and up* in the sending state as the measure of skill from Barro and Lee’s Educational Attainment Dataset,<sup>111</sup> interpolated by Graham and Tucker.<sup>112</sup> We expect that the formality will increase as the education levels in the sending state increase, since migration is less likely to cause a backlash.

Third, those migrants who cannot speak the local language are likely to be seen as more culturally threatening,<sup>113</sup> therefore, we include a measure of *shared language*. Migrants from states that do not share a language should provoke a larger backlash and we should see less formality. Finally, migrants from the *same colonial system* may also be seen as culturally similar and find more support.<sup>114</sup> We therefore expect that treaties with a state in the *same colonial system* should lead to more formality.

Finally, we argue that democracies and civilian autocracies should have greater levels of informality of agreements concluded than military or personalist dictatorships, as they are more worried about popular opinion. In terms of information available, we argue that information should be harder to find when immigration is less

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108 Barbara Geddes et al., *Autocratic Breakdown and Regime Transitions: A New Data Set*, 12 PERSP. POL. 313 (2014).

109 MONTY G. MARSHALL ET AL., POLITY IV PROJECT: POLITICAL REGIME CHARACTERISTICS AND TRANSITIONS, 1800-2009 (2011), [www.systemicpeace.org/polity/polity4.htm](http://www.systemicpeace.org/polity/polity4.htm).

110 Judith L. Goldstein & Margaret E. Peters, *Nativism or Economic Threat: Attitudes Toward Immigrants During the Great Recession*, 40 INT’L INTERACTIONS 376 (2014); Hainmueller & Hiscox, *supra* note 22.

111 Robert J. Barro & Jong W. Lee, *A New Data Set of Educational Attainment in the World, 1950-2010*, 104 J. DEV. ECON. 184 (2013).

112 Graham & Tucker, *supra* note 105.

113 Margaret E. Peters et al., *Labor Markets and Cultural Values: Evidence from Japanese and American Views About Caregiving Immigrants*, 31 ECON. POL. 428 (2019).

114 Language and colonial system data are from Peters, *supra* note 4.

popular (H6) and should be hard to find across all regime types (H7). Again, we use Geddes's measure of regime type, which differentiates between democracies, civilian autocracies, military autocracies, and personalist autocracies.

As noted above, we also include controls for time and region effects. Scholars have noted that informalization has increased over time;<sup>115</sup> we therefore include indicator variables for each decade, with 1945-1954 excluded from the analysis to act as the reference category.<sup>116</sup> Similarly, scholars have argued that Asian countries are more likely to use informal agreements.<sup>117</sup> We include regional indicators, with Asia, excluded to be the reference category. Region is coded from the Correlates of War dataset region codes.<sup>118</sup>

### C. Methodology

We use a combination of descriptive statistics and regression analysis to test our argument. For the descriptive statistics, we employ a difference of means with continuous variables, which show whether the average in two groups is statistically the same or different, and cross-tabulations with discrete variables, which show whether the proportion is the same across groups.

We then run regressions on our four variables: formality, ease of access, text found, and sources of information. While these variables are dichotomous, we follow the standard in the current literature and run Ordinary Least Squares (OLS), as that requires fewer assumptions and is easier to interpret. Regression allows us to understand the effect of one of our explanatory variables while controlling for our other variables of interest.

OLS provides us with the best linear predictor of the effect of our explanatory variables on our outcome variables. In the case of a single explanatory variable, the OLS provides the line of best fit through the data. For example, if we were interested in the effect of income on support for immigration, we would plot the income of survey respondents (measured in \$1,000) on the x-axis and their support for immigration (measured from 0 meaning close the border to 1 meaning no border controls) on the y-axis. OLS regression draws a line through the data that minimizes the squared distance from the line to every point. The slope of the line,  $\beta$ , measures how much the dependent variable changes for a one-unit change in the explanatory variable. Returning to the example of how income affects support for immigration, assume that the coefficient on income,  $\hat{\beta}$ , is equal to 0.01. This means that for every \$1,000 dollars of income that someone makes, their support for immigration goes up by 0.01. We use  $\hat{\beta}$  to denote the slope of the line of best fit because we always have

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115 Vabulas, *supra* note 44.

116 By excluding one of the categories, in this case the decade 1945-1954, the coefficients on the other categories are the difference in the effect of that category from the excluded or reference category. For example, if there is a positive coefficient on the category of 1955-1964, this means that we can find more information for the treaties signed from 1955-1964 than we could for 1945-1954.

117 ACHARYA, *supra* note 82.

118 The regions are: North America, South America, Europe, sub-Saharan Africa, Middle East, North Africa, Asia, and Australia/Oceania.

some uncertainty in our estimates. With multiple explanatory variables, OLS does the same thing, but instead of providing the line of best fit, it calculates the (hyper) plane of best fit. This allows us to quantify how much our outcome variable,  $Y$ , increases if we increase our explanatory variable,  $X$ , by a certain amount, controlling for many other factors.

In addition to the estimate of coefficient  $\hat{\beta}$ , we are also interested in how precise our estimates are. Our standard errors measure our uncertainty about our estimate; larger standard errors mean that we have greater uncertainty regarding our estimate. Finally, in this type of analysis, we usually have an implied null hypothesis that the true effect of an explanatory variable is zero. The p-value (denoted by the stars next to the coefficient) measures the probability of observing a coefficient as large as the one we estimated, assuming the true effect is 0. We usually use the convention of  $p < 0.05$  as our measure of “statistically significant.”<sup>119</sup>

In odd-numbered models, we only include variables for which we have data for most or all observations. In even-numbered models, we include all explanatory variables, which leads to the loss of many observations.

### III. RESULTS

#### A. Descriptive Data

First, to understand whether searching in other languages would improve the information we could find, we searched for agreements in German, Korean and Tagalog. The search in English yielded the best results, allowing us to find information on the type of agreement for 40.8% of the cases and 316 agreement texts. In German (N=215), we were able to find only 8 agreement texts and to identify the type of agreement in only 10.6% of the cases. In Korean (N=300), we could not identify any type of agreement and could find no agreement text among the 300 agreements searched. Lastly, in Tagalog (N=22), we were able to identify the type of agreement and find the agreement text in only one case, namely the 2005 bilateral labor agreement between South Korea and the Philippines on the Employment Permit System of Korea (Table 2).

Table 2: Results of the internet searches in different languages

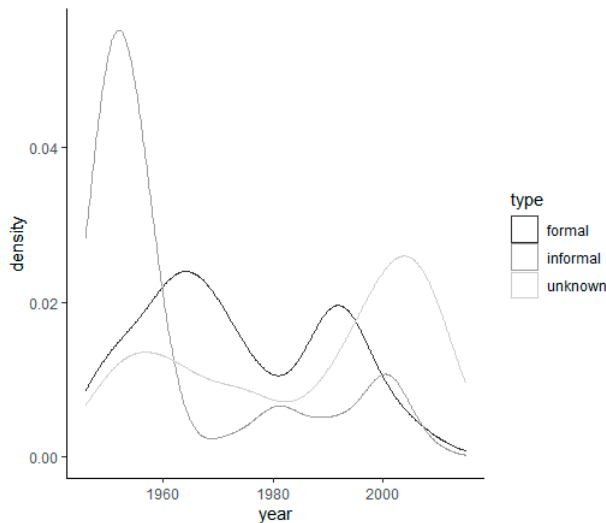
	Informality			Text found		
	Formal	Informal	Unknown	Found	Not found	N
English	264	92	515	316	555	871
German	15	8	192	8	207	215
Korean	0	0	300	0	296	300
Tagalog	0	1	21	1	21	22

119 A p-value,  $p < 0.05$ , is simply a convention; it is not based on any mathematical property.

**Note:** This table shows the results of our searches in different languages. We examined a random sample of all agreements for our searches in German, Korean, and Tagalog.

In addition to a large number of agreements that are either informal or whose level of formality cannot be ascertained, BLAs have differed greatly in their level of formality over time (Figure 2). First, we observe a large spike in informal agreements signed in the period 1945-1960. After this initial predominance of informal agreements, formal agreements were the norm until the 2000s, when informality again rose to prominence. However, we were unable to code a large number of agreements because we do not even have information on their titles, and know of their existence only through secondary research, press releases, and the World Treaty Index. This is likely due to the fact that states have no reporting requirement for informal agreements and suggests that informality is actually much higher than what our data shows.

*Figure 2: Formality of agreement over time*

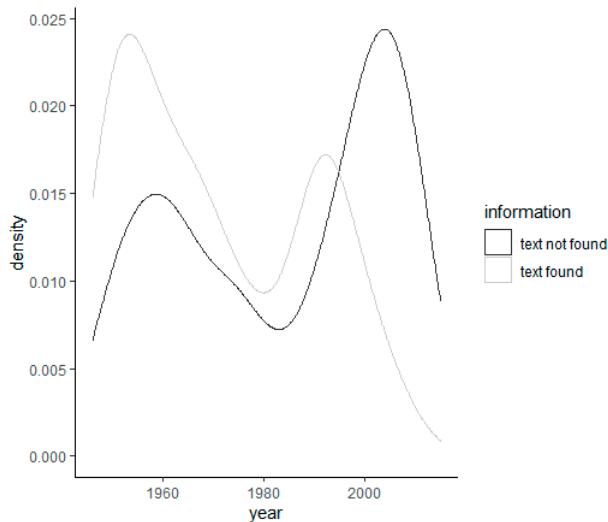


**Note:** This figure shows the density (or the proportion of all agreements) of formal and informal agreements and the agreements for which we do not have the title (unknown).

Further, even if we do have the title of the agreement, it is still very hard to access the text of the agreement. As noted in Table 2, we could only find the text for 316 agreements or about 36% of all agreements. Figure 3 shows how the ability to find the text of an agreement varies over time by agreement type. In the period 1956-1980, as well as 1995-2015, the majority of agreement texts were inaccessible. The inability to find information on agreements since 1995 is all the more striking given the growth of the Internet during this time period. As it has become increasingly the norm that governments should post information online, we would expect that

it should be easier to find information on more recent agreements, since older agreements may not have been digitized yet. As we saw in Figure 1 above, this was also the period in which most agreements were signed. While there has been an increase in the number of formal agreements whose text we can find, the ability to find the text of informal agreements has remained relatively constant over time. Taken together, Figures 2 and 3 suggest that most agreements can be considered at least partially obfuscated, especially those agreements signed after 1990.

Figure 3: Text not found over time



**Note:** This figure breaks down the density of all agreements for which we could find the agreement text.

Overall, the trends in informality and accessibility over time point towards both an informalization of agreements since at least the 2000s as well as the possibility of obfuscation as an important reason why information on most BLAs is hard to find.

We examine the difference in means for continuous explanatory variables on informality (Table 3) as well as accessibility (Table 7) and cross-tabulation for categorical values on informality (Table 4, 5, 6), to explore the relationship between our explanatory and dependent variables.

First, we examine whether there is a difference in the number of veto players between states that sign formal and informal agreements or agreements regarding which we do not know whether they are formal or informal. We believe that the inability to find the title of an agreement suggests that it is informal, as formal treaties are supposed to be deposited at the UN and often in the home country records as well. We find that the mean measure of veto players is higher (by about 0.1) for formal than for informal and unknown agreements. This finding contradicts H1;

states with more veto players are more likely (and not less likely as hypothesized) to sign formal agreements. It may be the case that a developed democratic culture in receiving states leads to higher levels of transparency and hence formality. However, from our results, it still seems that the difficulty of ratification and the institutional complexity of immigration policymaking do not explain the rise in informality and the accessibility of agreements over time.

Next, we turn to variables that signal that an agreement may not be popular in either state (H2), including employment levels and support for the far right in the receiving state and employment growth in the sending state. We find that receiving states with higher levels of employment are more likely to sign a formal treaty than an informal one. While states with more support for the far right are more likely to sign a formal treaty, perhaps to lock in an agreement, we are much less likely to be able to categorize the treaty as support for the far right grows. This suggests that governments want to obfuscate the existence of these agreements in places with strong and especially growing support for the far right. As support for the far right grows, incumbents may come to fear their political survival and therefore obfuscate agreements in order to avoid additional public deliberation and potential loss of voter support. Finally, we see the opposite for sending countries: when employment growth is low, sending governments have an incentive to publicize an agreement to placate those out of work; as employment grows, however, they may want to hide these agreements to placate domestic employers worried about losing workers to companies abroad. Indeed, these results show that domestic politics plays a substantial role in decisions on the informality of agreements, and may thus help explain the informalization of agreements over time.

*Table 3: Difference of means formality & explanatory variables*

	Mean			p
	Formal	Informal	Unknown	
Veto players (RS)	0.42	0.38	0.37	0.002
Employment/Population (RS)	64.12	62.51	65.92	<0.001
Employment growth (SS)	0.39	1.67	0.92	0.002
Far Right (RS)	0.30	0.08	2.03	<0.001
Executive constraints (RS)	6.00	6.39	5.18	0.01
Ratio of GDP per capita	0.65	0.41	0.60	0.05
Average schooling (SS)	4.50	2.94	5.78	<0.001

**Note:** This table displays the mean level of each variable in the different categories along with whether the difference between the categories is statistically significant. Differences in which  $p < 0.05$  are statistically different from each other at conventional levels.

Our third hypothesis argues that states that cannot credibly commit to policies—because those policies can easily be changed by the next executive, or because they



are personalist dictatorships with few constraints upon their whims—are more likely to sign formal agreements to lock in the policy. In Table 3, we find some support for this: states with fewer executive constraints are more likely to sign formal agreements. However, we do not find support for the idea that personalist dictators are more likely than other types of leaders to sign formal agreements (Table 3). In light of these results, it is interesting to consider, whether democratic and autocratic governments exhibit divergent trends in their levels of informality. In hypothesis 5, we assumed that democracies and civilian autocracies would exhibit the highest levels of informality. If anything, democracies are the most likely to sign formal agreements, followed by military regimes. This result stems from the fact that democracies in general sign the most agreements (N=643) and we cumulatively have more information on their agreements' titles and, consequently, their (in)formality. Overall, we could not find much information on the formality of agreements signed by autocracies. Contradicting the idea that a more democratic culture in both the receiving and sending state perhaps leads to overall more transparency is the fact that regardless of regime type, we could not decidedly categorize a majority of agreements as either formal or informal. Nevertheless, democracies do exhibit the highest level of informality amongst all regime types, even though the number of decidedly informal agreements is rather low, only 89 out of 760 agreements.

*Table 4: Informality and regime type*

Regime type	Informality			Total
	Formal	Informal	Unknown	
personal	4 13.33%	2 6.67%	24 80%	30
democracy	194 30.17%	83 12.90%	366 56.92%	643
military	4 23.52%	1 5.88%	12 70.58%	17
monarchy	5 16.67%	3 10.00%	22 73.33%	30
party	3 10.00%	0 0.00%	27 90.00%	30
oligarchy	5 50.00%	0 0.00%	5 50.00%	10
Total	215	89	456	760

**Notes:** row percent below number.

$\chi^2=25.540 \cdot df=10 \cdot \text{Cramer's } V=0.130 \cdot \text{Fisher's } p=0.002$

Fourth, we examine whether informality is more likely to be resorted to when receiving states are concerned about backlash (H4). We find first that states are more likely to sign informal agreements when the sending state is poorer than the receiving state (the ratio of the sending state's to receiving state's GDP per capita is

lower). On average, sending states' GDP per capita is 41% of that of the receiving state when there is an informal treaty, and 65% when a formal treaty is signed. Average schooling is also much higher when there is a formal treaty. Both these facts suggest support for H4, as wealthier, more educated immigrants should provoke less of a backlash than poorer, less educated immigrants.<sup>120</sup> Additionally, there is more support for immigrants who speak the same language as locals,<sup>121</sup> and we find that when the receiving and sending states share a language, they are more likely to sign a formal agreement (Table 5). We also find that states are more likely to sign a formal agreement when they share a former colonial relationship (Table 6).

Table 5: Informality and shared language

Shared language	Informality			Total
	formal	informal	unknown	
Yes	79 35.42%	7 3.14%	137 61.43%	223
No	99 29.82%	61 18.37%	172 51.81%	332
Total	178	68	309	555

Notes: row percent below number.

$\chi^2=28.798 \cdot df=2 \cdot \text{Cramer's } V=0.228 \cdot p<0.001$

Table 6: Informality and former colonial relationship

Former colonial relationship	Informality			Total
	formal	informal	unknown	
Yes	65 39.16%	5 3.01%	96 57.83%	166
No	199 28.22%	87 12.34%	419 59.43%	705
Total	264	92	515	871

Notes: row percent below number.

$\chi^2=16.423 \cdot df=2 \cdot \text{Cramer's } V=0.137 \cdot p<0.001$

We now turn to our hypothesis (H6) that it should be harder to find information about BLAs when immigration is less popular (Table 7). We find some support for this hypothesis: importantly, support for the far right is much higher in cases where we could not find any information about the treaty. However, employment in the receiving state is higher when it takes longer to find information or when we cannot find information than when we can easily find it. Finally, we see that

120 Hainmueller & Hiscox, *supra* note 23; Jens Hainmueller & Daniel J. Hopkins, *The Hidden American Immigration Consensus: A Conjoint Analysis of Attitudes Toward Immigrants*, 59 AM. J. POL. SCI. 529 (2015).

121 Peters et al., *supra* note 112.

employment growth in the sending state is higher in cases where we could not find any information. These may be cases in which the sending country does not care to advertise the BLA because it does not want to offend domestic employers. Thus, we find some support for our hypothesis that states often have a desire to obfuscate these agreements.

*Table 7: Difference of means accessibility & unemployment (RS), employment growth (SS), and far right (RS)*

	Mean			P
	Under 3 min.	Over 3 min.	Not found	
Employment/Population (RS)	63.39	64.38	65.79	<0.001
Employment growth (SS)	0.660	0.368	1	0.05
Far Right (RS)	0.50	0.14	1.86	<0.001

**Note:** This table displays the mean level of each variable in the different categories along with whether the difference between the categories is statistically significant. Differences in which  $p < 0.05$  are considered to be statistically different from each other at conventional levels.

### B. Regression Results

Now we turn to our regression results. While the bivariate results above are informative, regression allows us to examine the effect of each variable while controlling for the other variables. However, due to data coverage of the different variables, we often lose observations. Therefore, our first model only includes variables for which we have coverage for all observations, and our second includes all variables and drops the observations for which the data are missing.

Table 8 presents the regression results for *informality*.<sup>122</sup> We find mixed support for our hypotheses; although the coefficients are often in the hypothesized direction, they are not often statistically significant. We find little support for  $H_1$ ; there is no statistically significant effect of veto players and the coefficient is in the opposite direction of the hypothesis. We find slightly more support for the idea that there is greater informality when immigration is likely to be unpopular, yet the results are mixed ( $H_2$ ). Informal treaties are more likely when the sending state is poorer than the receiving state (the ratio of GDP per capita is lower), and when there is more support for the far right in the receiving state. However, none of these coefficients are statistically significant. In addition, when unemployment in the receiving state is lower (or employment/population higher), informal agreements are more likely, which does not support our second hypothesis. Third, we find little support for the idea that states use formal agreements to lock-in immigration policy changes ( $H_3$ ):

122 In this model, informality refers to agreements where we could clearly classify the agreement type as informal.

personalists are more likely to use informal agreements and democracies less so than the omitted category of civilian autocracies.

*Table 8: Results from OLS regressions of informality on explanatory variables*

	Dependent variable:	
	Informality	
	(1)	(2)
Veto players (RS)		-0.044 (0.136)
Employment/population (RS)		0.0002 (0.004)
Ratio of GDP per capita SS and RS		-0.037 (0.046)
Employment growth (SS)		-0.0003 (0.006)
Far right (RS)		0.002 (0.003)
Executive constraints (RS)		-0.024 (0.018)
Same colonial system	-0.191*** (0.044)	-0.029 (0.044)
Shared language	-0.014 (0.042)	0.044 (0.043)
Level of education (SS)		0.012 (0.008)
Democracy (RS)	-0.034 (0.113)	0.014 (0.142)
Military autocracy (RS)	-0.010 (0.191)	0.189 (0.183)
Monarchy (RS)	-0.097 (0.142)	-0.385 <sup>†</sup> (0.200)
Party autocracy (RS)	-0.276 <sup>†</sup> (0.142)	-0.133 (0.214)
Oligarchy (RS)	-0.349 (0.300)	
Years since 1945	0.017*** (0.001)	0.026*** (0.002)
South America	-0.173	-0.055

	Dependent variable:	
	Informality	
	(1)	(2)
	(0.112)	(0.169)
Europe	-0.099 (0.076)	-0.045 (0.138)
Africa	0.013 (0.206)	0.080 (0.225)
MENA	-0.011 (0.177)	0.166 (0.263)
North America	0.318*** (0.079)	-0.060 (0.142)
Australia & Oceania	-0.308 (0.346)	
Constant	0.041 (0.138)	-0.429 (0.330)
Observations	472	253
R <sup>2</sup>	0.562	0.769
Adjusted R <sup>2</sup>	0.549	0.750
Residual Std. Error	0.336 (df = 457)	0.249 (df = 232)
F Statistic	41.877*** (df = 14; 457)	38.721*** (df = 20; 232)

**Note:** See text for description of variables. \*p\*\*p\*\*\*p<0.01

There is some support for concerns about a backlash ( $H_4$ ). As expected, sharing a language with potential migrants leads to a higher formality of agreements, although not always at conventional levels. Sharing the same colonial system also leads to more formality, as former colonial subjects may know the culture and be less likely to provoke a backlash. However, there is no support for the idea that the level of education in the sending country or the ratio of GDP per capita of the sending and receiving states has an impact on the informality of BLAs.

Interestingly, we see some regional variation, but not what we would expect from the literature. North America—in which Canada has the most such agreements—seems to have a greater propensity for signing informal agreements than the rest of the world. This goes against the idea of an “ASEAN way.” Another trend that becomes evident, is the rise in informalization over time, starting in 1996. This corresponds with a trend towards lower accessibility of information on agreements overall. Both the accessibility of the text and the number of sources on an agreement exhibit a

downward trend, as well (see Table 8).<sup>123</sup> Since the percentage of votes for far right parties in the receiving state has a negative impact on the accessibility of agreements as well as the ease of access and leads to a lower number of sources, we believe that the expected backlash from the signing of BLAs ultimately may explain this trend and supports our hypothesis that information on BLAs is more accessible when immigration is popular in the receiving state.

Next, Table 9 provides the results from our variables on access to information. Contrary to our expectations ( $H_5$  and  $H_7$ ), overall, both the formality and the accessibility of agreement texts are higher in democracies than in autocracies. The coefficient on democracy is positive and significant for finding the text of an agreement. But, there is no difference between types of autocracies and democracies on our other accessibility variables.

Finally, we find some support for the idea that it is harder to find information on BLAs, when immigration is unpopular and migrants from a particular sending state are perceived to be culturally different. As employment/population in the receiving states increases, we find that BLAs are easier to access (the coefficient is in the hypothesized direction and significant at conventional levels). We find more information on agreements when immigrants are from the same colonial system, speak the same language, and when the sending state has a higher level of education on average. Institutional effects, such as veto players and executive constraints on informality and accessibility, are, however, inconclusive. We see a slight trend towards more informality and less accessibility where these institutional effects are higher. As above, we see that more recent agreements are harder to find.

*Table 9: Results from OLS regressions of information on explanatory variables*

	Dependent variable:					
	Text found		Number of Sources		Ease of Access	
	(1)	(2)	(3)	(4)	(5)	(6)
Veto players (RS)		0.061 (0.236)		0.005 (0.084)		0.259 (0.210)
Employment/population (RS)		-0.012 (0.007)		0.003 (0.003)		-0.014** (0.007)
Ratio of GDP per capita SS and RS		0.144* (0.080)		0.030 (0.028)		0.071 (0.071)
Employment growth (SS)		-0.010 (0.011)		-0.004 (0.004)		-0.002 (0.010)
Far right (RS)		-0.015*** (0.005)		0.003 (0.002)		-0.010** (0.005)

123 Here the negative impact of the period 1956-1985 on accessibility could possibly also be due to some of these agreements only being available in archives as opposed to online depositories.

	Dependent variable:					
	Text found		Number of Sources		Ease of Access	
	(1)	(2)	(3)	(4)	(5)	(6)
Executive constraints (RS)		0.054 <sup>*</sup> (0.030)		-0.014 (0.011)		0.006 (0.027)
Same colonial system	0.086 (0.057)	0.077 (0.076)	0.107 <sup>***</sup> (0.029)	0.008 (0.027)	0.062 (0.045)	0.040 (0.068)
Shared language	-0.328 <sup>***</sup> (0.055)	-0.209 <sup>***</sup> (0.075)	0.117 <sup>***</sup> (0.027)	-0.005 (0.027)	-0.108 <sup>**</sup> (0.043)	-0.167 <sup>**</sup> (0.067)
Level of education (SS)		-0.020 (0.013)		0.005 (0.005)		0.012 (0.011)
Democracy (RS)	0.486 <sup>***</sup> (0.146)	0.382 (0.246)	-0.063 (0.074)	0.067 (0.088)	0.194 <sup>*</sup> (0.117)	0.213 (0.220)
Military autocracy (RS)	0.498 <sup>**</sup> (0.248)	0.545 <sup>*</sup> (0.316)	0.015 (0.125)	0.0001 (0.113)	0.243 (0.198)	0.444 (0.282)
Monarchy (RS)	-0.240 (0.184)	-0.097 (0.346)	-0.011 (0.093)	0.014 (0.123)	-0.205 (0.147)	-0.092 (0.309)
Party autocracy (RS)	0.049 (0.183)	0.308 (0.370)	0.033 (0.092)	0.090 (0.132)	0.048 (0.146)	0.119 (0.331)
Oligarchy (RS)	0.131 (0.389)		-0.023 (0.196)		0.094 (0.310)	
Years since 1945	-0.008 <sup>***</sup> (0.001)	-0.003 (0.003)	0.004 <sup>***</sup> (0.001)	-0.001 (0.001)	-0.001 (0.001)	0.0004 (0.003)
South America	0.102 (0.145)	0.118 (0.293)	0.108 (0.073)	-0.038 (0.104)	0.011 (0.115)	-0.092 (0.261)
Europe	0.251 <sup>**</sup> (0.099)	0.446 <sup>*</sup> (0.239)	0.021 (0.050)	-0.032 (0.085)	0.103 (0.079)	0.277 (0.213)
Africa	-0.145 (0.267)	-0.247 (0.389)	0.001 (0.134)	0.026 (0.139)	-0.098 (0.213)	-0.142 (0.347)
MENA	0.711 <sup>***</sup> (0.229)	0.830 <sup>*</sup> (0.456)	-0.058 (0.115)	0.011 (0.162)	0.465 <sup>**</sup> (0.183)	0.612 (0.407)
North America	0.136 (0.102)	-0.015 (0.246)	-0.388 <sup>***</sup> (0.052)	-0.112 (0.088)	-0.086 (0.082)	0.019 (0.220)
Australia-Oceania	-0.498 (0.449)		0.040 (0.226)		-0.197 (0.358)	
Constant	0.171 (0.179)	0.353 (0.570)	0.787 <sup>***</sup> (0.090)	0.850 <sup>***</sup> (0.203)	-0.043 (0.143)	0.503 (0.509)
Observations	472	253	472	253	472	253
R <sup>2</sup>	0.246	0.285	0.525	0.068	0.065	0.120

	Dependent variable:					
	Text found		Number of Sources		Ease of Access	
	(1)	(2)	(3)	(4)	(5)	(6)
Adjusted R <sup>2</sup>	0.223	0.226	0.510	-0.008	0.037	0.048
Residual Std. Error	0.435 (df = 457)	0.429 (df = 233)	0.219 (df = 457)	0.153 (df = 233)	0.347 (df = 457)	0.383 (df = 233)
F Statistic	10.648*** (df = 14; 457)	4.878*** (df = 19; 233)	36.072*** (df = 14; 457)	0.901 (df = 19; 233)	2.279*** (df = 14; 457)	1.669** (df = 19; 233)

**Note:** See text for description of variables. \*p\*\*p\*\*\*p<0.01

### C. Effect of Formality on Migrant Stocks and Flows

Finally, we examine whether states might choose a more formal agreement as a way to lock in flows. By creating a formal agreement, the agreement might be implemented more effectively, as both sides might take the agreement more seriously. To examine this alternative hypothesis, we examine the effect of formality on migrant stocks and migrant flows within country-pairs (or dyads). We regress the migrant stocks<sup>124</sup> from country S to country R on the agreement type, whether there is no agreement, an informal agreement to send migrant workers from S to R, or a formal agreement to send migrant workers from S to R, and a set of control variables to capture the push and pull factors of migration.<sup>125</sup> We repeat this for each year after the agreement up to five years after the agreement was signed.

Figure 4(a) displays the coefficients for “No Agreement” and “Formal Agreement.” “Informal agreement” is the excluded category. Figure 4(b) repeats this analysis but examines migrant flows<sup>126</sup> rather than stocks. The symbol represents the point estimate of the coefficient, and the line represents the 95% confidence interval. If the line does not cross the dashed o-line, the coefficient is statistically significant at conventional levels.

We see that the coefficient on “No agreement” is always less than 0 and that the confidence interval does not cross zero. This means that there are more migrants when states have an agreement than when they do not. We also see that the point

124 Migrant stock data comes from THE WORLD BANK, MIGRATION DATA (2021).

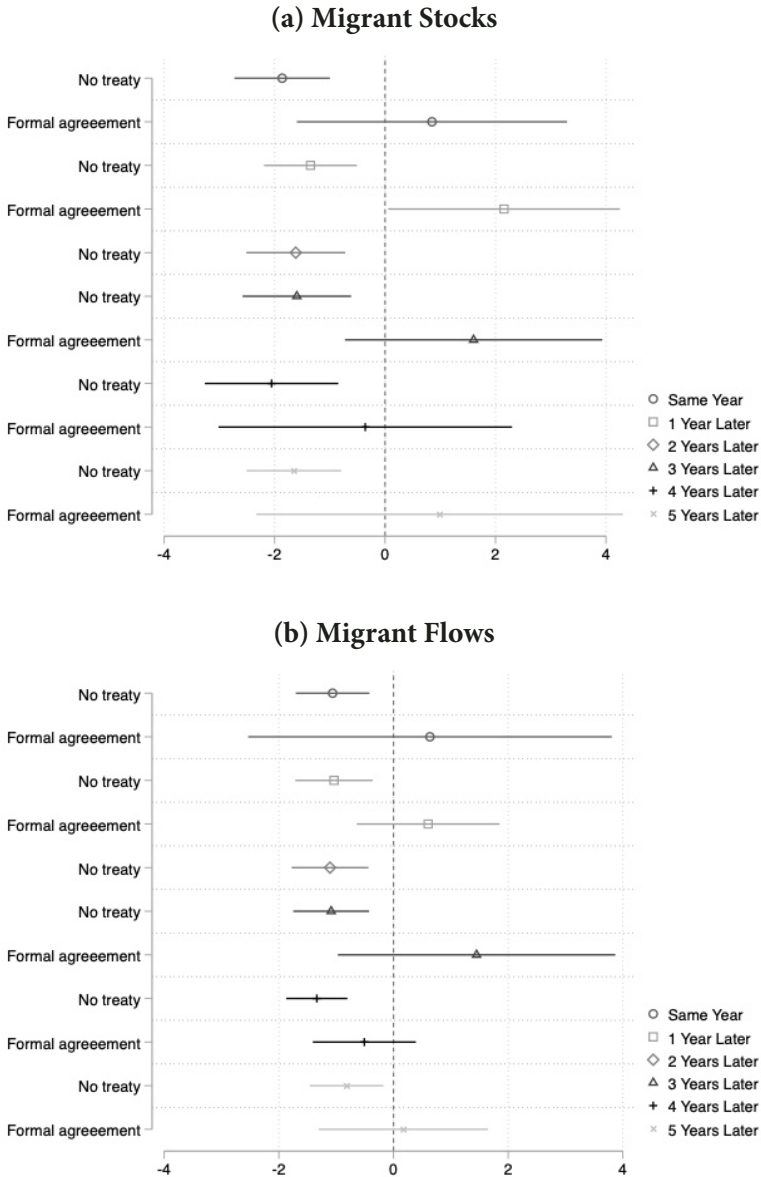
125 We use a gravity model. For a discussion of the gravity model, see Jennifer Fitzgerald et al., *Defying the Law of Gravity: The Political Economy of International Migration*, 66 WORLD POLIT. 406 (2014). Controls include factors that make the receiving state a more attractive location: GDP receiving state, GDP per capita, and total population to measure economic factors and the Polity score to measure political factors. Push factors from the sending state include the GDP per capita and total population to measure economic push factors, the average polity score, and political terror score to measure human rights violations over a long period to capture political factors. Dyadic factors include shared alliance, shared language, whether the sending country is a former colony of the receiving country, and distance and contiguity variables. Data is from Leslie Johns et al., *Replication Data for: Migration and the Demand for Transnational Justice*, HARV. DATAVERSE, V1 (2022), <https://doi.org/10.7910/DVN/PATI3W>. See the source for more details.

126 DEMIG, DEMIG C2C, VERSION 1.2, LIMITED ONLINE EDITION (2015).



estimate on the coefficient on “Formal agreement” is sometimes positive and sometimes negative, but the confidence interval always crosses the o-line. This means that there is no additional effect on migration stocks or flows of a formal agreement over an informal one. Thus, it does not appear that states are using formal agreements to better implement an agreement.

Figure 4: Effect of Agreement type on Migrant Stocks and Flows



## CONCLUSION

We argue that states use informal agreements to hide information about them when immigration is unpopular and to allow greater flexibility in an uncertain policy area.

While our regressions show mixed results, we do find support for the idea that informality is higher and accessibility lower when immigration is likely to be unpopular and when there is fear of an immigration policy backlash. In addition, we verify the assumed informalization trend in global politics: bilateral labor agreements have been becoming increasingly informal since 1945, and simultaneously less accessible. Moreover, domestic institutional effects such as veto players and executive constraints only slightly influence informality and accessibility.

We bear in mind that these mixed and insignificant effects could potentially be due to an undercount of BLAs, there being a vast universe of cases we simply cannot get access to.

Is it plausible, however, that obfuscation may be at play? On the basis of our preliminary findings, we believe that obfuscation may to some extent explain the inaccessibility of agreements. Despite our assumption that a possible undercount of informal agreements may skew our results favorably towards more formal agreements, we could still find evidence for the rise in informality over time. In addition, we found support for the idea that accessibility is low, and informality high, when immigration is unpopular and there are fears of a future backlash. Choosing informal agreements as the intended outcome of negotiations can be understood as one strategy for governments to obfuscate and thus hide what they are doing from domestic audiences.

In the future, we envision that applying our informality and accessibility measures to new datasets, such as the newest BLA database by Chilton and Woda introduced and discussed in this issue, could potentially allow for a more comprehensive analysis of informality as well as accessibility. Especially interesting in this respect would be to analyze whether the observed trend towards informality has continued into the second decade of the 21st century. In addition, researchers should conduct qualitative case studies on the topic based on the regional and temporal variation we have come to verify in this Article. Looking at the modes of negotiation and domestic legitimization of informal and formal agreements comparatively might also allow researchers to underscore our hypotheses, building on the preliminary findings of this first explorative look into the dynamics of informality and obfuscation in bilateral labor agreements.